

## **CHAPTER 80-5-6**

### **QUALIFIED INTERMEDIARY**

80-5-6. 01 Financial Institutions serving as a qualified intermediary related to IRS Section 1031 Like-Kind Property Exchanges.

#### **80-5-6-01 Financial Institutions serving as a qualified intermediary related to IRS Section 1031 Like-Kind Property Exchanges.**

(1) Any financial institution authorized to exercise full trust powers is permitted to act as a qualified intermediary on an IRS 1031 property exchange. Banks meeting this requirement should have qualified and trained personnel conducting this activity and should maintain the financial records related to these transactions separate from the financial records of the bank or its subsidiaries and shall meet the agency accounting requirements of GAAP in maintaining such records.

(2) If a bank that is not authorized to conduct full trust powers wishes to act as a 1031 qualified intermediary, either through the bank or a subsidiary of the bank, it should provide a written notification to the Department that it wishes to act in this capacity.

(a) The following should be fully documented in the notification to the Department:

(1) A summary should be provided regarding the qualifications and training of the bank personnel that will be conducting this activity;

(2) Written policies and procedures should be submitted to be utilized in the conduct of this activity that sufficiently mitigates risk, documents the activities of the bank and establishes proper controls over this activity;

(3) The bank should provide an indication of what the impact of this activity will be on the fidelity and liability coverage of the bank, and if necessary, obtain coverage riders to protect the financial institution from liability in conducting this activity;

(4) Procedures should be established for the bank, in the event of a customer default during a 1031 exchange; and

(5) An indication should be given regarding the accounting for these transactions that reflects how these transactions will be segregated from the bank's records and how agency accounting in accordance with GAAP shall be maintained for these transactions.

(3) The Department reserves the right to deny approval for any financial institution that fails to demonstrate the ability to safely and soundly conduct this activity based on the above-required documentation, or which reflected a less than satisfactory condition, or which is operating under an administrative action with the Department or Federal Regulators.

Authority O.C.G.A. § 7-1-61.